

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



MOSES NATHANIEL HIGGS,

Plaintiff,

v.

Civil Action No. 3:08CV170

ED WRIGHT *et al.*,

Defendants.

MEMORANDUM OPINION

Plaintiff, a Virginia inmate, submitted this 42 U.S.C. § 1983 action on March 7, 2008.

He also has applied to proceed *in forma pauperis*. A prisoner is precluded from proceeding *in forma pauperis*:

if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Plaintiff had at least three prior actions and appeals dismissed as frivolous, malicious, or for failing to state a claim upon which relief could be granted. *See, e.g., Higgs v. Minott*, 3:04cv48 (E.D. Va. July 14, 2000); *Higgs v. Drew*, 3:92cv337 (E.D. Va. Jan. 29, 1993); *Higgs v. Hester*, 3:92cv449 (E.D. Va. Mar. 4, 1993). Plaintiff's complaint did not demonstrate that he is in imminent danger of serious physical harm. Therefore, by Memorandum Order entered on April 9, 2008, the Court denied Plaintiff's request to proceed *in forma pauperis* and directed Plaintiff to pay the \$350.00 filing fee within eleven (11) days of the date of entry thereof.

More than eleven (11) days have elapsed since the entry of the April 9, 2008 Memorandum Order and Plaintiff has not paid the full filing fee. Instead, Petitioner has written the Court and asked to enter into an installment plan. Under 28 U.S.C. § 1915(g), Petitioner is precluded from entering into a payment plan. Accordingly, the action will be DISMISSED WITHOUT PREJUDICE.

An appropriate Order shall accompany this Memorandum Opinion.

It is so ORDERED.

/s/
Richard L. Williams
United States District Judge

Date: **APR 24 2008**
Richmond, Virginia